
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

MARK EDWARD TOWNER,

Plaintiff,

v.

USAA FEDERAL SAVINGS BANK *doing
business as* USAA FINANCIAL SERVICES,

Defendant.

**MEMORANDUM DECISION AND
ORDER ADOPTING [56] REPORT &
RECOMMENDATION**

Case No. 2:14-CV-00148-DN-DBP

District Judge David Nuffer

Magistrate Judge Dustin B. Pead

The Report & Recommendation¹ by United States Magistrate Judge Dustin B. Pead issued on October 1, 2014, sets forth recommendations on several pending motions.² The parties were notified of their right to file objections to the Report and Recommendation within fourteen (14) days of service pursuant to [28 U.S.C. § 636\(b\)](#) and Rule 72(b) of the Federal Rules of Civil Procedure. As of the date of this order, the Court has not received any objections to the Report and Recommendation from any of the parties.

Pursuant to [28 U.S.C. § 636\(b\)](#) and Rule 72(b)(3) of the Federal Rules of Civil Procedure, the Court has reviewed de novo all materials, including the record that was before the magistrate judge and the reasoning set forth in the Report and Recommendation. The Court agrees with the analysis and conclusion of the magistrate judge, and adopts the Report and Recommendation.

IT IS HEREBY ORDERED that:

¹ [Docket no. 56](#), filed October 1, 2014.

² See USAA Federal Savings Bank's Supplemental motion to Amend, [docket no. 24](#), filed June 23, 2014; Plaintiff's Motion to Amend Complaint, [docket no. 26](#), filed June 23, 2014; USAA Federal Savings Bank's Motion to File a Second Amended Answer and Counterclaim, [docket no. 34](#), filed July 24, 2014; Leave of Court to Extend Filing Deadlines, [docket no. 37](#), filed August 5, 2014; Leave of Court to File an Amended Complaint, [docket no. 38](#), filed August 5, 2014; Motion to Seal Document, [docket no. 46](#), filed August 29, 2014; USAA Federal Savings Bank's Motion Regarding Towner's Ex Parte Submission of Documents to the Court, [docket no. 48](#), filed August 29, 2014.

- (1) the Report and Recommendation is ADOPTED;³
- (2) Plaintiff's motion to file a first amended complaint by allowing him to add claims for negligent infliction of emotional distress ("NIED") and intentional infliction of emotional distress ("IIED") is GRANTED in part;⁴
- (3) Plaintiff's motion to file a first amended complaint to add NIED and IIED claims is DENIED in part to the extent Plaintiff intends to assert claims against any legal representatives;⁵
- (4) Plaintiff's motion for leave to file a second amended complaint is DENIED;⁶
- (5) Defendant's motion to amend its answer to Plaintiff's complaint by adding a counterclaim for unjust enrichment/quantum meruit is GRANTED;⁷
- (6) Defendant's motion to amend its answer to Plaintiff's complaint by adding a counterclaim for unjust enrichment and an affirmative defense of lack of standing is GRANTED;⁸
- (7) Plaintiff's motion to extend all remaining deadlines is DENIED;⁹
- (8) Plaintiff's motion to seal medical records is DENIED;¹⁰
- (9) Defendant's motion to not consider medical documents Plaintiff submitted to the Court *ex parte* is GRANTED.¹¹

IT IS FURTHER ORDERED that Plaintiff must file his amended complaint as outlined in [Docket No. 26](#) within seven (7) days of this order.

³ Docket no 56, filed August 1, 2014.

⁴ Plaintiff's Motion to Amend Complaint, [docket no. 26](#), filed June 23, 2014.

⁵ *Id.*

⁶ Leave of Court to File an Amended Complaint, [docket no. 38](#), filed August 5, 2014.

⁷ USAA Federal Savings Bank's Supplemental motion to Amend, [docket no. 24](#), filed June 23, 2014.

⁸ USAA Federal Savings Bank's Motion to File a Second Amended Answer and Counterclaim, [docket no. 34](#), filed July 24, 2014.

⁹ Leave of Court to Extend Filing Deadlines, [docket no. 37](#), filed August 5, 2014.

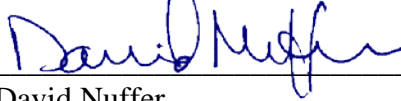
¹⁰ Motion to Seal Document, [docket no. 46](#), filed August 29, 2014.

¹¹ USAA Federal Savings Bank's Motion Regarding Towner's Ex Parte Submission of Documents to the Court, [docket no. 48](#), filed August 29, 2014.

IT IS FURTHER ORDERED that Defendant must file its amended answer as outlined in Docket Nos. 24 and 34 within seven (7) days from the date Plaintiff files his amended complaint.

Dated October 21, 2014.

BY THE COURT:

A handwritten signature in blue ink, appearing to read "David Nuffer", is written over a horizontal line.

David Nuffer
United States District Judge